

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENNY HUBBARD, #141527,

Plaintiff,

CIVIL ACTION NO. 10-14390

v.

DISTRICT JUDGE LAWRENCE P. ZATKOFF

MAGISTRATE JUDGE MARK A. RANDON

RUM LEMON,

Defendant.

REPORT AND RECOMMENDATION TO DISMISS RUM LEMON AND CLOSE CASE

On November 2, 2010, Plaintiff filed a *pro se* Complaint against several Defendants (Dkt. No. 1). The only remaining Defendant is RUM Lemon. On November 24, 2010, the United States Marshals Service mailed Plaintiff's Complaint to Lemon. The waiver of service was returned unexecuted on February 12, 2011; Lemon no longer works for the Michigan Department of Corrections ("MDOC") (Dkt. No. 36). On August 20, 2011, the Court ordered Plaintiff to show cause why this Magistrate Judge should not recommend that Plaintiff's Complaint be dismissed without prejudice as to Lemon for failure to serve him with the 120-day period prescribed by Fed. R. Civ. P. 4(m) (Dkt. No. 81). Plaintiff responded on August 29, 2012 (Dkt. No. 84), and this Magistrate Judge ordered the MDOC to provide Lemon's last-known address (Dkt. No. 88). On March 8, 2013, the United States Marshals Service mailed Plaintiff's Complaint to Lemon. On March 28, 2013, the waiver of service was again returned unexecuted; there was no forwarding address.

On April 2, 2013, the Court ordered Plaintiff to provide an address for Lemon by April 19, 2013 (Dkt. No. 90). Plaintiff was warned that failure to do so would result in a recommendation that Lemon be dismissed without prejudice. Plaintiff did not provide an address.

Accordingly, this Magistrate Judge **RECOMMENDS** that Plaintiff's claims against Lemon be **DISMISSED WITHOUT PREJUDICE** pursuant to Fed. R. Civ. P. 4(m) and that Plaintiff's case be **CLOSED**.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of HHS*, 932 F.2d 505, 508 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981). The filing of objections which raise some issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *See Willis v. Sec'y of HHS*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge.

Within fourteen (14) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be no more than 20 pages in length unless, by motion and order, the page limit is extended by the court. The response shall address each issue contained within the objections specifically and in the same order raised.

s/Mark A. Randon
MARK A. RANDON
UNITED STATES MAGISTRATE JUDGE

Dated: April 26, 2013

Certificate of Service

I hereby certify that a copy of the foregoing document was served on the parties of record on this date, April 26, 2013, by electronic and/or first class U.S. mail.

s/Eddrey Butts
Acting Case Manager to Magistrate Judge Mark A. Randon